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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMANJIM IRVIN
COMMISSIONERMARK SPITZER
COMMISSIONER

Arizona Corporation Commission

DOCKETED

JUL 27 2001

DOCKETED BY

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF) DOCKET NO. W-01656A-98-0577
SUN CITY WATER COMPANY AND SUN CITY) DOCKET NO. SW-02334A-98-0577
WEST UTILITIES COMPANY FOR APPROVAL)
OF CENTRAL ARIZONA PROJECT WATER)
UTILIZATION PLAN AND FOR AN) **MOTION TO CONTINUE**
ACCOUNTING ORDER AUTHORIZING A) **HEARINGS AND DEADLINE**
GROUNDWATER SAVINGS FEE AND) **FOR FILING REBUTTAL**
RECOVERY OF DEFERRED CENTRAL) **TESTIMONY**
ARIZONA PROJECT EXPENSES.)

The Sun City Taxpayers Association ("SCTA") hereby respectfully requests that the deadline for filing Rebuttal Testimony and dates for the Pre-Hearing Conference scheduled for August 14, 2001 and the Hearing scheduled to commence August 15, 2001 be continued for a period of not less than 45 days. The continuance is necessary and appropriate 1) to permit the Superior Court to consider and rule upon Motions to Dismiss filed by Sun City Water Company and the Recreation Centers of Sun City (the "SC Rec Centers") in the action entitled *Sun City Taxpayers Association, Inc., et al v. Recreation Centers of Sun City, Inc. and Sun City Water Company, Inc.* Maricopa County Superior Court Case No. CV2001-006415; 2) to permit Citizens further opportunity to produce the Operating Agreement that is required by the terms of the Exchange Agreement with the SC Rec Centers; and 3) due to intervening deadlines that will make it extremely difficult for SCTA's counsel to adequately participate in the preparation of Rebuttal Testimony and prepare for hearing.

1 A. **THE COURT ACTION**

2 The Superior Court only recently scheduled oral argument on the Motions for
3 September 10, 2001 at 9:30 a.m. (A copy of the Court's Minute Entry is attached as Exhibit
4 A.) It is anticipated that the Superior Court will render a decision shortly after oral argument
5 is conducted.

6 As the Commission knows, this court action challenges the authority of the
7 SC Rec Centers to enter into the Exchange Agreement with Sun City Water Company
8 because the Agreement was not approved by the membership as required by the SC Rec
9 Centers' Articles of Incorporation and Bylaws. The Exchange Agreement is fundamental
10 and a predicate to implementing Citizens' preferred alternative. Furthermore, Decision No.
11 62993 required Citizens to have such an agreement in place prior to August 1, 2000. It is
12 wasteful of the Commission and the parties' time and resources to undertake actual hearings,
13 which would be rendered meaningless in the event the Exchange Agreement is declared null
14 and void. SCTA's pre-filed Testimony demonstrates numerous deficiencies in the
15 Preliminary Engineering Report ("PER") (e.g., failure to conduct complete hydraulic studies;
16 failure to adequately consider the use of the Beardsley Canal and Joint Use Facilities; failure
17 to consider Sun City West's lack of firm groundwater supply; and failure to consider use of
18 Citizens' existing storage facility). SCTA seeks a continuance to further Commission and
19 judicial economies and preserve the resources of the parties.

20 While SCTA has in good faith prepared for the hearings, and has presented
21 pre-filed Testimony, SCTA's monetary and staff resources have been stretched to an
22 unacceptable level by being required to proceed in two forums simultaneously.¹ The Court
23 action will be dispositive of whether the Sun City Water Company and the SC Rec Centers

24

25 ¹ It should be emphasized, the lawsuit was filed two months before a procedural schedule was set in
26 this matter.

1 can proceed pursuant to the Exchange Agreement. The Exchange Agreement is an
2 indispensable component of Citizens' preferred alternative. Even Citizens stated at open
3 meeting that it could not and would not commence construction of this project until the
4 lawsuit is resolved. Therefore, even if the Commission were to find the PER adequate
5 (which is unlikely), construction will not proceed until there is a final judicial ruling in the
6 lawsuit. Under such circumstances, the Commission, in the exercise of its sound discretion,
7 should continue the hearings in this matter to allow the Court to act on the SCTA's lawsuit.
8 Requiring the parties to expend additional sums in preparing for and attending Commission
9 hearings during the pendency of the Superior Court action is unnecessary, unproductive and
10 wasteful.

11 **B. AN OPERATING AGREEMENT WITH SC REC CENTERS DOES**
12 **NOT YET EXIST**

13 On June 14, 2001, Citizens, in response to a request (C-1.18) for a copy of all
14 operating agreements (Exhibit B to the Exchange Agreements), or if none are executed, the
15 most recent draft of the operating agreements, Citizens stated:

16 "At this juncture, Citizens still is negotiating with the
17 Recreation Centers of Sun City regarding an operating
18 agreement.

19 Thus, 16 months after the Commission ordered that final agreements with the golf courses be
20 in place no later than August 2000, the Operating Agreement, a fundamental aspect of the
21 Exchange Agreement, is still not in place. A draft of the Agreement was not even produced.
22 Any evaluation of the PER is incomplete until the PER can be examined in context of the
23 operating characteristics of the proposed plan, which cannot be determined until the
24 Operating Agreement is in place. Therefore, the hearing should be continued until Citizens
25 has an executed Operating Agreement in place with the SC Rec Centers.
26

1 **C. NEW DEADLINES FACED BY SCTA'S LEGAL COUNSEL**

2 Finally, SCTA's legal counsel has deadlines that overlap the Commission's
3 proceeding that did not exist at the time the procedural schedule was set. In particular,
4 between now and August 13, 2001, counsel must prepare motions, cross-petitions and
5 responses relating to two petitions for Supreme Court review filed July 13, 2001. This
6 additional and unexpected workload will make it extremely difficult to adequately prepare
7 Rebuttal Testimony and for Hearing. Therefore, it is likewise requested that the time for
8 filing Rebuttal Testimony be continued.²

9 WHEREFORE, it is respectfully requested that the time for filing Rebuttal
10 Testimony and that the Pre-Hearing Conference and the Hearing be continued for a period
11 not less than forty-five (45) days.

12 Respectfully submitted this 27th day of July, 2001.

13 MARTINEZ & CURTIS, P.C.

14
15 By: 

16 William P. Sullivan
17 Paul R. Michaud
18 2712 North Seventh Street
19 Phoenix, Arizona 85006-1090
20 Attorneys for Sun City Taxpayers
21 Association
22
23

24 ² SCTA has no objection to the time period for filing responsive testimony to be extended a period
25 of like time.
26

1 An original and ten (10) copies of
2 the foregoing are filed this 27th
3 day of July, 2001 with:

4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington
7 Phoenix, Arizona 85007

8 A copy of the foregoing
9 mailed or hand-delivered this 27th
10 day of July, 2001 to:

11 William A. Mundell, Chairman
12 Arizona Corporation Commission
13 1200 West Washington
14 Phoenix, Arizona 85007

15 Jim Irvin, Commissioner
16 Arizona Corporation Commission
17 1200 West Washington
18 Phoenix, Arizona 85007

19 Marc Spitzer, Commissioner
20 Arizona Corporation Commission
21 1200 West Washington
22 Phoenix, Arizona 85007

23 Jane Rodda
24 Acting Chief Administrative Law Judge
25 Arizona Corporation Commission
26 400 West Congress
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1503/-8/pleadings/continue hrg.motion.0724.01

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EXHIBIT A

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

*** FILED ***
07/16/2001

07/13/2001

CLERK OF THE COURT
FORM V000A

HONORABLE COLLEEN MCNALLY

K. Ballard
Deputy

CV 2001-006415

FILED: _____

SUN CITY TAXPAYERS ASSOCIATION
INC, et al.

BRAD K KEOGH

v.

RECREATION CENTERS OF SUN CITY
INC, et al.

CHARLES I KELHOFFER

TODD C WILEY

ORAL ARGUMENT SET

IT IS ORDERED setting this matter for oral argument on (1) Defendant Sun City Water Company, Inc.'s motion to dismiss and (2) Defendant Recreation Centers of Sun City, Inc.'s motion to dismiss on Monday, September 10, 2001 at 9:30 a.m. in this division, Central Court Building, 201 West Jefferson, 7th Floor, Courtroom 702, Phoenix, Arizona.

The proceeding will take place in the Superior Court's new "e-courtroom". A record of the proceedings may be made by videotape in lieu of a court reporter. Should you want an unofficial copy of the proceedings, the parties or counsel may give the Court a blank, previously unused videotape at least fifteen (15) minutes before the trial and a copy will be made at no cost. A specific type of videotape must be used for this system in order to ensure the most reliable record: Maxell or Fuji Super HG 120 (VHS) (SNG T-120) or equivalent. If the proceedings last for more than one day, a new tape must be provided each day. For the convenience of the parties, the store in the courthouse cafeteria sells the appropriate videotape. The Court can also provide a digital log, if the party provides an unused CD-R.

Docket Code 094

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

*** FILED ***
07/16/2001

07/13/2001

CLERK OF THE COURT
FORM V000A

HONORABLE COLLEEN MCNALLY

K. Ballard
Deputy

CV 2001-006415

Should an official transcript be required, you may request that the Court prepare it. The party ordering the transcript must pay for it. With this new technology, a court reporter is likely not required and the parties are encouraged to experience the Court's video recording system before requesting a court reporter. If a court reporter is required, the Court must receive a written request at least 48 hours before the commencement of the proceeding. Failure to timely request a court reporter will be deemed consent to proceed without a court reporter.

Oral argument shall not exceed five minutes for each side. If extended oral argument is necessary, counsel must so advise the Court no later than four court days prior to the date set for hearing so that oral argument can be rescheduled.

Any motion or stipulation for continuance must be filed with the Court no later than four court days prior to the date set for hearing. After that date, no continuances will be granted except for extraordinary circumstances.

All memoranda and affidavits regarding the motion must be filed and copies lodged with this division no later than four court days prior to the date set for hearing.

COUNSEL ARE HEREBY DIRECTED TO PROVIDE THE COURT WITH COPIES OF ALL CASES AND STATUTES CITED IN MEMORANDA AND PLEADINGS, WHICH THEY WANT THE JUDGE TO READ AND CONSIDER, CONCERNING THE MOTION(S) TO BE RULED ON, INCLUDING ARIZONA CASES AND STATUTES.

Counsel are advised that if the answering memorandum is not timely filed in accordance Arizona Rules of Civil Procedure, oral argument may be vacated and the motion will be ruled upon in accordance with Rule 7.1(b), A.R.C.P.

IF ANY ISSUES IN THE MOTION RELATE TO DISCOVERY PROBLEMS, COUNSEL SHALL CONFER TO ATTEMPT TO RESOLVE THEIR DIFFERENCES OR TO REDUCE THE AREAS OF DISPUTE. COUNSEL ARE REMINDED THAT THE COURT WILL LIKELY IMPOSE SANCTIONS AGAINST THE LOSING PARTY IN ACCORDANCE WITH RULE 37(a)(4), RULES OF CIVIL PROCEDURE.